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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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9 BRET ROBERT OSBORN, MICHAEL  
10 PRAFF, KATHLEEN ANN PRAFF, and  
11 MARTY GAYLE OSBORN, on behalf of  
themselves, the general public, and all others  
similarly situated,

No. C 04-00336 JSW

12 Plaintiffs,

**NOTICE OF TENTATIVE  
RULING AND QUESTIONS**

13 v.

14 EMC CORPORATION, and Does 1 through  
15 50,

16 Defendant. /

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18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
19 NOTICE OF THE FOLLOWING **TENTATIVE RULING AND QUESTIONS** FOR THE  
20 HEARING SCHEDULED ON SEPTEMBER 30, 2005:

21 The Court **tentatively GRANTS** Defendant EMC's Corp.'s motion for summary  
22 judgment and **tentatively DENIES** Plaintiffs' cross-motion for summary judgment. Further,  
23 the Court **tentatively GRANTS** the parties' joint motion for preliminary approval of class  
24 action settlement. The Court has reviewed the parties' memoranda of points and authorities  
25 and, thus, does not wish to hear the parties reargue matters addressed in those pleadings. If the  
26 parties intend to rely on authorities not cited in their briefs, they are ORDERED to notify the  
27 Court and opposing counsel of these authorities reasonably in advance of the hearing and to  
28 make copies available at the hearing. If the parties submit such additional authorities, they are

1 ORDERED to submit the citations to the authorities only, without argument or additional  
2 briefing. *See* N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral  
3 argument to explain their reliance on such authority.

4 The parties shall have fifteen minutes to address the following questions:

5 (1) What is the status of the appeal in *Koehl, et al. v. Verio, Inc.* attached to Plaintiffs'  
6 Supplemental Memorandum of Points and Authorities?

7 (2) What authority, if any, demonstrates that the advances at issue are “*assignments of*  
8 *wages*” covered by California Labor Code section 300?

9 (3) If the Court concludes that EMC’s practice of charging back advances made on  
10 commissions is not unlawful, would Plaintiffs still contend that the releases signed are  
11 invalid? If so, on what basis?

12 (4) In opposition to EMC’s motion, Plaintiffs appear to argue that the releases are unlawful  
13 under California Civil Code section 1542 (“Section 1542”) regarding the release of  
14 unknown claims. In *Jefferson v. California Department of Youth Authority*, 28 Cal.4th  
15 299, 306-7 (2002), clarified that a general release of “all claims and causes of action”  
16 would be sufficient to release all claims, including unknown claims. Moreover, a release  
17 may cover to unknown claims if there is a factual showing that the parties intended to  
18 settle unknown claims. *Id.* at 307. The *Jefferson* Court held that a section in the release  
19 quoting Section 1542 and stating “this release will apply to all unknown and  
20 unanticipated injuries ... and all rights under Section 1542 ... are expressly waived”  
21 unambiguously established the parties’ intent to cover such claims. *Id.* Here, the  
22 releases at issue specifically reference and explain Section 1542. On what evidence in  
23 the record do Plaintiffs rely to demonstrate the parties did not intend to release unknown  
24 claims?

25 (5) In Plaintiffs’ motion for summary judgment, they assert that EMC stipulated that there  
26 are over 100 sales employees in California who were subject to the charge back  
27 provisions. However, in the joint motion for preliminary approval of class action  
28 settlement, the parties assert that the class contains approximately 60 employees. How  
many employees are in the class affected by the proposed settlement? If the number is  
100 as opposed to 60, would that affect the fairness of the proposed settlement?

1 (6) Do the parties have anything further to add?  
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4 **IT IS SO ORDERED.**  
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6 Dated: September 29, 2005  
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*Jeffrey S. White*  
JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE